

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Robert Lee Bailey,

Civil No. 12-1727 (DWF/LIB)

Petitioner,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Scott P. Fisher, Warden,

Respondent.

This matter is before the Court upon Petitioner Robert Lee Bailey's ("Petitioner") objections (Doc. No. 10) to Magistrate Judge Leo I. Brisbois's December 27, 2012 Report and Recommendation (Doc. No. 9) insofar as it recommends that Petitioner's Petition for Writ of Habeas Corpus (Doc. No. 1) be denied without prejudice for failure to exhaust administrative remedies. Respondent filed a response to Petitioner's objections on January 18, 2013. (Doc. No. 15.)

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of the parties, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Petitioner's objections. Having carefully reviewed the record, the Court concludes that Petitioner's objections offer no basis for departure from the Report and Recommendation.

Petitioner generally contends that Magistrate Judge Leo I. Brisbois improperly recommended dismissal of his habeas petition without prejudice for failure to exhaust administrative remedies. (*See* Doc. No. 10 at 1.) Petitioner seeks relief in connection with two incidents involving possession of food items wrongfully taken from the prison dining hall in violation of Bureau of Prisons policy. Petitioner contends that his due process rights were violated as a result of the Discipline Hearing Officer (“DHO”) “depriving [Petitioner] of the right to present the alleged stolen property as evidence of his innocence” during a disciplinary hearing. (*Id.*) Even assuming, without deciding, that Petitioner has now exhausted his administrative remedies, the Court concludes that the petition is properly denied on the merits.

The record supports a finding that, in both disciplinary proceedings, Petitioner was provided with notice of the charges, an opportunity to present evidence, and a written statement of the reasons for the disciplinary action sufficient to satisfy the requirements of due process. *See Superintendent v. Hill*, 472 U.S. 445, 454 (1985); *Wolff v. McDonnell*, 418 U.S. 539, 556-57 (1974). Furthermore, the DHO’s decisions are supported by at least “some evidence in the record.” *Hill*, 472 U.S. at 455-56 (holding that “the requirements of due process are satisfied if some evidence supports the decision by the prison disciplinary board to revoke good time credits” and noting that “the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board”). Consequently, the Court denies Petitioner’s § 2241 petition for a writ of habeas corpus. Because dismissal is warranted on the merits of the petition, the Court dismisses this action with prejudice.

Based upon the *de novo* review of the record and all of the arguments and submissions of the parties, and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Petitioner Robert Lee Bailey's objections (Doc. No. [10]) to Magistrate Judge Leo I. Brisbois's December 27, 2012 Report and Recommendation are **OVERRULED**.

2. Magistrate Judge Leo I. Brisbois's December 27, 2012 Report and Recommendation (Doc. No. [9]) is **ADOPTED** for the reasons stated herein and to the extent set forth above.

3. Respondent's Motion to Dismiss (Doc. No. [3]) is **GRANTED**.

4. Petitioner Robert Lee Bailey's Petition for Writ of Habeas Corpus for Persons in Federal Custody Under 28 U.S.C. § 2241 (Doc. No. [1]) is **DENIED**.

5. This action is **DISMISSED WITH PREJUDICE**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: February 21, 2013

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge